

RSA-3320-2019 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA-3320-2019 (O&M)
Decided on : 04.09.2023**

Rajender and others

. . . Appellant(s)

Versus

Vijay Pal (deceased) through LRs and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Ajay Jain, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by the defendants (appellants herein) against the concurrent findings of decretal of suit by the Courts below, in favour of the plaintiffs (respondents herein).

2. Suit filed by the plaintiffs – Vijay Pal and Smt. Chandro, is for seeking a decree of mandatory injunction and permanent injunction by claiming that they are owners in possession of Khasra No.80 (1-4), comprised in Khewat No.116 and Khatauni No.130, situated in the revenue estate of village Dharan, Tehsil Bawal. Plaintiffs sought injunction for restraining the defendants from interfering in their possession. Plaintiffs also sought for a decree of mandatory injunction, in case, defendants succeed to encroach upon and raise construction over the portion of the suit property.

3. In the written statement filed by the defendants, fact pleaded by the plaintiffs in their plaint that they are owners in possession of the land in question, which is ancestral one, was disputed, rather, a plea of adverse

possession was taken by alleging that a pucca wall had been constructed by the defendants about 30 years back, and the construction of four pucca rooms, a kitchen, and staircase has also been raised, which was not objected by the plaintiffs. Defendants in the written statement also pleaded that when they were raising boundary-wall about 20 years back, plaintiffs never raised any objection, and moreover, property in question is not a part of Khasra No.80.

In the replication filed by plaintiffs, stand taken in written statement by the defendants was denied and facts pleaded in the plaint were reiterated.

4. After going through the pleadings of the parties, learned Trial Court vide order dated 28.04.2015, framed the following issues:-

- “1. *Whether the plaintiffs are entitled to a decree of permanent and mandatory injunction as prayed for? OPP*
2. *Whether suit is not maintainable in the present form? OPD*
3. *Whether the plaintiffs have no locus standi and cause of action to file the present suit ? OPD*
4. *Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD*
5. *Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
6. *Whether this court has no jurisdiction to try this suit? OPD*
7. *Relief.”*

5. By taking note of the entries made in the Jamabandis (Ex.P3 & Ex.P4), and the mutation No.1395 in favour of the plaintiffs and proforma-defendants, learned Trial Court held that undisputedly, plaintiffs are

recorded as owner in possession of the property. Learned Trial Court further observed that as per Section 44 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as 'the Act of 1887'), said entries in the Jamabandis (Ex.P3 & Ex.P4) carries presumption of truth in favour of the plaintiffs.

On the other hand, no substance has been placed or produced by the defendants to rebut the said entries, recorded in favour of the plaintiffs. Even no material has been produced by the defendants that in what manner they are connected with the land in question. Thus, taking note of entries recorded in the revenue record, plaintiffs were held to be occupying the property in question, as owners in possession. Accordingly, plea of injunction was held to be genuine.

However, plaintiffs failed to prove their entitlement to seek decree for mandatory injunction, thus, no relief *qua* that part was granted.

6. After decreetal of the suit by the learned Trial Court, defendants filed an appeal before the learned First Appellate Court, however, said appeal resulted into its dismissal. Findings recorded by learned First Appellate Court in para Nos. 29, 30 & 31, are reproduced here-below:-

“29. However this present is a case of simplicitor suit for permanent injunction and the relief of mandatory injunction was in the alternative. In a suit for permanent injunction, the plaintiff is not under duty to prove his or her title. He is only supposed to prove his possession with the strength of impeccable evidence. No doubt question of title may incidently arise in a suit for permanent injunction and in that situation, the court has to decide the said vital issue. But here in this case, the defendants categorically laid their claim of Ghar No.8 Ahata No.8 and they never laid their claim on the suit property. Their alternative plea of adverse possession even could not be reproduced by defendant no.1 Surajbhan as

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DWI in his statement in the court, with regard to which reference has already been made hereinbefore.

30. *Reliance can be placed on a recent authority of Hon'ble Supreme Court of India in case **Shankar Anr. Vs. Surendra Singh Rawat (D) through LRs and others 2018(4) RCR (Civil) page 897**, wherein that case in a suit for permanent and mandatory injunction, mutually inconsistent plea of possession vide unregistered sale document and by way of adverse possession was repelled by Hon'ble Supreme Court by holding that the plea of adverse possession is a plea in desperation, because plea of title pursuant to a sale document defeats the plea of adverse possession.*

31. *Thus in my considered opinion, the defendants on the basis of their muscle power cannot set at naught the rule of law. They cannot frustrate the possessory rights of the plaintiffs over the plot in dispute, under the garb of their being owners in possession of Ghar No.8 Ahata No.8, which is situated towards the southern side of the suit property."*

7. I have heard learned counsel for the appellants (defendants) at length and also examined the impugned judgments & decree.

8. Mr. Ajay Jain, learned counsel for the appellants vehemently argues that entries in the column of ownership in the Jamabandis, are not sufficient to prove the ownership. While saying so, he places reliance upon the judgments of the Hon'ble Apex Court rendered in "**Jattu Ram v. Hakam Singh, 1993(4) SCC 403 : Law Finder Doc Id # 38801**", and "**Prem Nath Khanna and ors. v. Narinder Nath Kapoor (Dead) Through LRs and ors., 2016(2) RCR (Civil) 273 : Law Finder Doc Id # 746776**" as well as the judgment of this Court rendered in "**Dalipa @ Dhakkar Shah v. Punjab Wakf Board, 2010(2) RCR (Civil) 416 : Law Finder Doc Id # 208694**".

This Court is not in agreement with the submissions addressed

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by learned counsel for the appellants, because, learned Trial Court has itself held at the first stance that the such entries carry presumption of truth, which is rebuttable as per Section 44 of the Punjab Land Revenue Act, 1887. On the contrary, once no material has been placed/produced by the defendants/appellants on record to rebut the said presumption, the judgments cited are not applicable.

Otherwise also, Mr. Jain, learned counsel for the appellants failed to explain even before this Court that in what capacity, defendants/appellants are claiming their lawful right over the property in question, which otherwise is held to be in favour of the respondents/plaintiffs.

There is no answer available with the defendants/appellants to the said query.

Agreeing with the findings recorded by both the Courts below, this Court does not find any substantial reason to interfere with well reasoned judgments & decree of the learned Courts below, therefore, the findings recorded by the learned Courts below are hereby affirmed.

For the reasons recorded herein-above, the instant appeal *sans* merits, and thus, **dismissed**.

Civil Miscellaneous application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 04, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*